



DEPARTMENT OF PROCUREMENT SERVICES
CITY OF CHICAGO

SENT VIA U.S. FIRST CLASS MAIL AND FACSIMILE

October 15, 2012

Mr. Andrejs K. Bunkse, Esq.
General Counsel
Redflex Traffic Systems, Inc.
23751 N 23rd Avenue
Suite 150
Phoenix, Arizona 85085

Re: Rejection of Redflex Traffic Systems, Inc.'s Proposal for Spec. No. 105615 for Automated Speed Enforcement Program

Dear Mr. Bunkse:

This letter is to inform Redflex that it has been deemed a non-responsible bidder in regards to Specification No. 105615 for Automated Speed Enforcement Program (the "Specification").

On or about September 7, 2012, Redflex Traffic Systems, Inc. ("Redflex") submitted a proposal for consideration by the City for the Specification. Subsequent to Redflex's submittal of its proposal, the City has learned that in 2010, Redflex paid for a two night stay at a hotel in Phoenix, Arizona for a City employee, John Bills. The stay was valued at \$910.71. Mr. Bills' responsibilities as a City employee included managing Redflex's red light camera contract. The City has not been told the purpose of Mr. Bills visit to Phoenix. Redflex states that it conducted an internal investigation and, as a result, adopted a number of internal measures in an effort to prevent reoccurrence of this misconduct, including: amending its travel booking policies, counseling the employee involved, requiring the approval of Redflex' General Counsel for all contracts involving third party municipal sales/lobbying, creating a Vice President of Account Management position, and creating a whistleblower hotline. Redflex states that it has adopted a number of anti-bribery measures in addition to the aforementioned changes.

I understand that Redflex has stated that it has taken steps to train employees and to protect against similar misconduct in the future. While I commend Redflex for any actions it may have taken to mitigate the misconduct that occurred, I want to be very clear on what Redflex did not do: notify the City of the incident in any kind of timely manner. It appears that Redflex disclosed the incident to the City only after it realized that the story was going to appear in the newspapers. In October 2012, Redflex tendered correspondence to the City's Board of Ethics stating that Redflex had completed its own internal investigation in October 2010, some two years ago. The time to have self reported the incident was, at a minimum, the point in time when the internal investigation was completed, not two years later. Additionally, it is not clear to me why the reimbursement request from Redflex to Mr. Bills was made in 2012 and not in 2010.

As a result of Redflex's delay, the City was prevented from doing a number of things, such as: contacting its Inspector General to investigate Mr. Bills' actions, removing Mr. Bills from any position of management authority over the Redflex contract, disciplining Mr. Bills or any other employee involved in this matter and instituting additional controls and oversight regarding current Redflex contracts. I find that Redflex's failure to timely report this incident to the City is unacceptable behavior and is a failure by Redflex to act in the City's best interest.

It appears that a Redflex employee in a management position over a City contract violated, at a minimum, the City's ethics law, Redflex violated the City's ethics laws, and that Redflex in effect covered the matter up by failing to report it to the City for a period of two years. It was only at a point in time when the facts were to be made public that Redflex disclosed anything to the City. The City's contracts with Redflex require compliance with all laws, including those found in Chapter 2-156 of the Municipal Code of Chicago. Redflex's current contracts, PO 16396 for Digital Automated Red Light Enforcement Program, Installation, Maintenance and Operational Support and PO 18031 Red Light Camera Traffic System, Equipment, Maintenance, Support and Repairs, have provisions that render them voidable for violations of Chapter 2-156 of the Municipal Code of Chicago. Providing a City employee with hotel accommodations in an amount of \$910.71 is a violation of the City's ethics laws and constitutes a breach of contract on Redflex's existing contracts with the City.

Illinois law requires that City contracts be awarded to responsible bidders. *See* 65 ILCS 5/8-10-3; *Walsh/II In One Joint Venture III v. MWRD*, 389 Ill. App. 3d 138, 147 (1st Dist. 2009). The term "responsible" means that the bidder can be trusted to adequately do the job, *S.N. Nielsen Co. v. Public Building Commission*, 81 Ill. 2d 290, 299 (1980), and that requirement comes from the Municipal Purchasing Act. 65 ILCS 5/8-10-3(a). Pursuant to 65 ILCS 5/8-10-11, in determining the responsibility of a bidder, the CPO "may take into account other factors in addition to financial responsibility, such as past records of transactions with the bidder, experience, adequacy of equipment, ability to complete performance within a specified time limit and other pertinent considerations."

The City has wide discretion to determine if a bidder is responsible. *Joseph J. Henderson & Son, Inc. v. Village of Crystal Lake*, 318 Ill. App. 3d 880, 885 (2nd Dist. 2001); *Armstrong v. Crystal Lake Park Dist.*, 139 Ill. App. 3d 991, 998 (2nd Dist. 1985); *Northwest Disposal Co. v. Village of Fox Lake*, 119 Ill. App. 3d 546, 551 (2nd Dist. 1983). The term "responsible bidder" is incapable of any exact definition, but it has been held that the term "responsible" includes the ability of the contractor to discharge his obligations in accordance with what may be expected under the terms of the contract. *Armstrong*, 139 Ill. App. 3d at 998; *Hallett v. City of Elgin*, 254 Ill. 343, 347 (1912). A public body possesses great discretion in determining the lowest responsible bidder. *Best Bus Joint Venture v. Board of Educ. of the City of Chicago*, 288 Ill. App. 3d 770, 778 (1st Dist. 1997) (quoting 10 McQuillin on Municipal Corporations ' 29.73a, at 429-30 (3d ed. 1966)). Financial responsibility and ability to perform are not the only relevant factors. *Id.* A contract may be awarded to another bidder, "where this is done in the public interest, in the exercise of discretionary power granted under the laws, without fraud, unfair dealing or favoritism and where there is sound and reasonable basis for the award as made." *Id.*

Therefore, pursuant to 65 ILCS 5/8-10-11, as a result of the above mentioned facts, I hereby find that Redflex is not a responsible vendor related to this Specification. I have therefore rejected Redflex's proposal for Specification No. 105615 pursuant to 65 ILCS 5/8-10-12.

Sincerely,



Jamie L. Rhee
Chief Procurement Officer

cc: Stephen R. Patton
Gabe Klein
Lisa Schrader
C. Christine Burns